



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

June 4, 2008

Ref: EPR-N

Mr. George Gover
Superintendent
Bureau of Indian Affairs
P.O. Box 69
Crow Agency, Montana 59022

Re: Absaloka Mine Crow Reservation South Extension
Coal Lease, DEIS CEQ # 20080092

Dear Mr. Gover:

In accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the Bureau of Indian Affairs' (BIA) Absaloka Mine Crow Reservation South Extension Coal Lease Approval Draft Environmental Impact Statement (DEIS). The project proponent, Westmoreland Resources (WRI) proposes to extend the Absaloka Mine south on to the Tract III coal lease and the South Extension Tract within the boundaries of the Crow Indian reservation. The proposed mine extension would allow WRI to continue mining at the current production rate of 6.5 to 7.0 million tons of coal per year until approximately 2021.

This letter supplements our first letter sent on May 19, 2008 which contains the majority of our comments on the DEIS. Please find enclosed our recommended changes for the Surface Water section of the FEIS. These changes are needed to make the EIS consistent with EPA's draft NPDES permit that was announced for public comment on May 2, 2008. As we mentioned in our earlier letter, EPA received a new permit application from WRI in April 2008 which necessitated changes to the proposed permit. The language in the DEIS was based on WRI's previous application which only included information on water discharges during pre-mining and post reclamation. The draft National Pollutant Discharge Elimination System (NPDES) permit and the enclosed revised EIS language includes additional information on water discharges during the active mining phase. The enclosed EIS revisions also address several EPA comments that EPA reviewers had regarding water quality.

We appreciate the disclosure of the percent of greenhouse gas emissions¹ from the burning of coal from the Absaloka Mine on page 3-183. We recommend that this information be presented in terms that are more easily understood by the public, such as million metric tons per year CO2 equivalents. We also recommend that the section briefly explain the environmental impacts of global climate change, referencing the relevant scientific review reports available on EPA's or Intergovernmental Panel on Climate Change (IPCC) web sites at <http://www.epa.gov/climatechange/> and <http://www.ipcc.ch/>. In addition, EPA recommends that BIA include a cumulative impact analysis and a discussion of appropriate mitigation measures.

In accordance with our responsibilities under the Clean Air Act Section 309, it is EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. EPA is rating this DEIS as "Environmental Concerns – Insufficient Information" (EC-2). The "EC" rating means that EPA's review of the DEIS, which includes our May 19th letter to you, has identified the potential impacts to ground and surface water, air and wildlife that should be avoided in order to fully protect the environment. The "2" rating means the DEIS does not contain information to fully assess environmental impacts and that the additional information, analyses or discussion should be included in the final EIS. For further questions regarding this rating, please see the attached description of EPA's EIS rating system. We recommend that the information we have requested in this letter and in our May 19th letter be provided in the FEIS to address EPA's concerns.

If you have any questions regarding our comments please contact Dana Allen at 303-312-6870, Steve Potts at 406-329-3313 or me at 303-312-6004.

Sincerely,

Osb DLA

Larry Svoboda
Director, NEPA Program
Office of Ecosystems Protection and Remediation

Enclosures

cc: Rick Stefanic, BIA
Greg Hallsten, Montana DEQ

¹ Since the issuance of the April 2, 2007 Supreme Court decision in *Massachusetts v. EPA*, 127 S.Ct 1438 (2007), EPA has been developing a response to the remand as well as evaluating the broader ramifications of the decision throughout the Clean Air Act (CAA). On March 27, 2008, the Administrator announced that he has directed his staff to draft an Advanced Notice of Proposed Rulemaking (ANPR) to discuss and solicit public input on the specific effects of climate change and the interrelated issues raised by the possible regulation of greenhouse gas emissions under the CAA. Thus, this comment letter does not reflect, and should not be construed as reflecting, the type of judgment that might form the basis for a positive or negative finding under any provision of the CAA.